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EXAMINER

LIEU, JULIE BICHNGOC

ART UNIT PAPER NUMBER

2632

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12

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 12

Application Number: 09/636,272
Filing Date: August 10, 2000
Appellant(s): JUDGE, ALFRED H.

MAILED

JUL 15 2002

Technology Center 2600

W. R. Duke Taylor
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 18, 2002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

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(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows: Claims 25-31 stand finally rejected as attached in Exhibit B. Claim 32 is objected to. Claims 33-37 would be allowable if rewritten to overcome the 35 U.S.C 112, second paragraph rejection set forth in the previous office action and to include all of the limitations of the base claim and any intervening claims.

Note that the 35 U.S.C 112, second paragraph rejection addressed in the previous office action has now been corrected since after final amendment filed January 11, 2002 has never been entered.

(4) *Status of Amendments After Final*

The amendment after final rejection filed on January 11, 02 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 25-31 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

4,703,315	Bein et al.	10-1987
4,141,151	Jansky	2-1979
5,767,467	Grant	6-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 33-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 33, "said cavity" lacks antecedent basis. It appears that claim 33 should depend on claim 26. Correction or verification is required.

Claim Rejections - 35 USC § 103

2. Claims 25-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bein et al. (US Patent No. 4,703,315) in view of Jansky (US Patent No. 4,141,151).

Claims 25-26:

Bein et al. discloses a leveling mechanism comprising:

- a. a housing, a cavity in said housing (fig. 1)
- b. a rotating member 46 in said housing moving in the cavity such that the rotating member seeks an equilibrium position which corresponds to a horizontal or vertical plane;
- c. electrical contacts 52, 58 coupled with said rotating member and only completing an electrical circuit when said rotating member is in the equilibrium position;
- d. an indicator 30,32 electrically coupled with said electrical contacts for indicating to a user when the mechanism is in an equilibrium position; and
- e. A power source 18 coupled with said electrical contacts and said indicator for energizing said indicator when said electrical circuit is complete.

The level mechanism in Bein indicate whether the level condition is vertical or horizontal. As stated in col. 1, lines 9-11, it appears that the level indicating device in Bein is used with a workpiece, though it is not clear whether the work piece is a power tool or not.

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However, the use of a level condition indicating device in power tool, such as a portable electric power drill, comprising:

- a. a housing
- b. a motor within the housing
- c. an output coupled to the motor
- d. an activation member for energizing the motor for rotating the output

is conventional in the art as shown in Jansky. Therefore, it would have been obvious to one skilled in the art to use the leveling device of Bein with the power tool of Jansky in place of the bubble leveling device in Jansky because the leveling devices are functionally equivalent and also the LED indicator would provides more visual effect than just a bubble since it could be recognized more clearly from a remote position than the bubble leveler.

Claim 27:

The rotating member 46 is being fixed for rotation about a center axis 48 in the cavity in said housing. The housing 11 is rectangular in shape. However, one skilled in the art would have readily recognized using an appropriate shape of a housing the for the leveling device in Bein depending on its application but the shape of the housing for the device would not alter the function of the leveling device.

Claim 28:

The rotating member 46 includes a biased electrical contact 52 or 58. Col. 6 lines 23-27.

Claim 29:

The electrical contacts in Bein is a pair of conductive members coupled with the housing. Each member includes electrical contact portions spaced 90 degrees from one another about the

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circuit such that as the rotating member reaches the equilibrium position, the rotating member biased electrical member contacts the annular rings electrical contact portions completing the circuit and activating the indicator. Figs. 1 and 3.

Claim 30:

The rotating member 46 could be manufactured from an electrically conducting material.

Col. 5 lines 47-51.

Claim 31:

The rotating member 46 is partially cylindrical. It is not totally cylindrical and does not have at least one projecting member. However, one skilled in the art would have readily recognized that the rotating member in Bein without the projecting member would be functionally equivalent with the claimed cylindrical rotating member.

Allowable Subject Matter

3. Claim 32 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. Claims 33-37 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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(11) Response to Argument

Applicant's Remarks

5. The applicant has argued that there is no motivation or suggestion to combine Bein with Jansky and the examiner is utilizing hindsight in an attempt to combine the two references to Bein and Jansky.

Response to Applicant's Remarks

6. Applicant's arguments filed May 29, 01 have been fully considered but they are not persuasive.

Regarding suggestion or motivation in the references to combine the two cited prior arts to Bein and Jansky, and examiner's attempt to use hindsight, refer to Bein, background of the invention section.

The suggestion or motivation is stated in Bein that a leveling device is conventionally used in a workpiece and also in Jansky, a leveling device is clearly shown used in a powered workpiece. It would have been obvious to one skilled in the art to readily recognize combining the teachings of these two references for the reason stated in the rejection above and in light of suggestion made in both references.

Further, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a

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whole would suggest to one of ordinary skill in the art. In *re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In *re Bozek*, 163 USPQ 545 (CCPA) 1969.

Regarding the applicant's assertion that the examiner has attempted to make a hindsight reconstruction, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. *In re McLaughlin*, 443 F.2d 1392; 170 USPQ 209 (CCPA 1971).

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,



Julie Lieu
Primary Examiner
Art Unit 2632

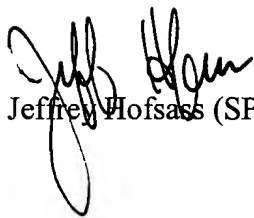
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June 27, 2002

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